

ORDINANCE NO. 63

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE CITY OF LODI REGULATING THE MAKING OF EXCAVATIONS IN PUBLIC STREETS, ROADS, ALLEYS, AND PLACES IN SAID CITY OF LODI, AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH.

The Board of Trustees of the City of Lodi do ordain as follows:-

Sec.1-That it shall be unlawful for any person, firm or corporation to make any excavation in any public street, road, alley, or other place in said City of Lodi without first giving notice to the Street Superintendent of said city of his or its intention to so do, and making a deposit with said Street Superintendent to secure the faithful compliance with the terms of this ordinance, as herein-after provided for. Such person, firm or corporation intending to make any such excavation shall file with said Street Superintendent written notice of such intention, describing specifically the location, area and depth of the proposed excavation or excavations intended to be made and shall deposit with said Street Superintendent a sum of money equal to ten cents per cubic foot for such excavation or excavations so proposed to be made in any street, road, alley or place where the same is to be refilled with natural material, and the further sum of twelve cents per cubic foot of so much of such excavation as shall be required to be refilled with macadam and ~~xxxxx xxxxxxxxxx~~ 24 cents per cubic foot for so much of such excavation as shall be required to be refilled with macadam and oil, or concrete, and 50 cents per cubic foot for so much of such excavation as shall be required to be refilled with standard asphaltum, as per specifications for asphalt streets, and twelve cents per cubic foot for so much of such excavation as shall be required to be refilled with gravel or surfacing material other than that hereinabove mentioned, provided that no deposit shall be less than one dollar, and provided further that in lieu of depositing a separate amount for each excavation made, such person, firm, or corporation may <sup>deposit</sup> with said Street Superintendent such sum, as in the opinion of said Street Superintendent shall be sufficient to guarantee the faithful

performance of the provisions of this ordinance by such person, firm, or corporation so intending to make any such excavation, said sum to be not less than will be sufficient to replace said street, road, alley or public place in as good condition as the same was or were in prior to the making of such excavation or excavations, and said Street Superintendent shall be empowered from time to time to cause such sums with him deposited to be diminished or amplified by the repayment of such sum, or some part thereof, to such person, firm or corporation making such deposit, or by requiring such person, firm or corporation to increase the sum so with said Street Superintendent deposited. All such sums shall be by said Street Superintendent kept in a separate account, and said Street Superintendent shall keep a book of accounts covering the same in which said book shall be entered a statement of the amount or amounts deposited by such person, firm or corporation and the purpose for which the same is deposited.

Sec. 2-The Street Superintendent on receiving said written notice and the deposit required by Section 1 hereof, shall issue to such person, firm or corporation a receipt for such deposit; which said receipt shall specifically show the particular excavation or excavations for which said sum shall have been deposited, where the same is deposited for a specific excavation or excavations, or where the same constitutes a general deposit, such fact shall likewise be stated in such receipt, and such receipt shall further show the name of the person, firm or corporation depositing the same and the time fixed by said Street Superintendent within which such excavation shall be refilled and said street, road, alley or place returned to the condition it was in prior to the making of such excavation. No such receipt shall be transferable.

Sec. 3-All refilling of such excavations shall be made in the following manner, to-wit:

All dirt, soil, rock or other material which is and does constitute the natural material of such street, road, alley or place shall be replaced and carefully tamped in layers of not exceeding three inches in thickness, with a tamping iron or other tamper, of such weight as in the opinion of said Street Superintendent shall

be sufficient, and each layer shall be moistened sufficiently to pack well before the next layer is put down, and the last layer of such material shall be sufficiently moistened to pack well and tamped, although the same may be less than three inches in thickness. In all cases where a pipe not exceeding four inches in diameter is placed in such excavation, all the natural material removed from such excavation shall be replaced therein. When the street, road, alley or place where such excavation is made is surfaced with gravel, crushed rock, macadam, or oil macadam, the gravel, crushed rock, macadam or oil macadam shall be kept separate from all other material and shall be replaced and tamped on the top of such other material in such manner that the same shall conform to the line, grade and character of the material with which such street, road, alley or place is surfaced, and in such manner that the same will not become depressed from use or settle on the material under the same.

Sec. 4-Wherever any excavation or excavations shall be made in any asphalt or macadamized street with a concrete base, a concrete block shall be built over the fill and shall extend at least six inches outside of the lines of excavation, and give the same a bearing upon solid earth.

Sec. 5-It shall be the duty of any person, firm or corporation making any such excavation in any public street, road, alley or place to place and maintain lights at each end of such excavation and at distances of not more than fifty (50) feet along the line thereof, from sunset of each day to sunrise of the day following, until such excavation is entirely refilled.

Sec. 6-After such excavation is commenced, the work of making and refilling the same shall be prosecuted with due diligence, and so as not to obstruct the street, road, alley or other public place or travel thereon more than may be actually necessary therefor. If the work is not so prosecuted, or if the work of refilling does not, in the judgment of the Street Superintendent, comply with the terms of this ordinance, the Street Superintendent shall notify the person, firm or corporation named in the receipt above mentioned, and to such person, firm or corporation issued, that the work is not being prosecuted with due diligence, or that the refilling of such excava-

tion is not being properly done, and shall require such person, firm or corporation, within five days from the service of such notice, to proceed with the diligent prosecution of said work, or to properly complete the same, as the case may be, and if such notice is not complied with, said Street Superintendent shall immediately take possession of such trench or excavation, and shall do whatever is necessary to refill said excavation and restore the street, road, alley or other public place, or any part thereof, excavated, to as good condition as the same was in before such excavation was made, all at the proper cost, charge and expense of the person, firm or corporation to whom said receipt shall have been issued, and said cost shall be a charge against the deposit covered by said receipt, and the person, firm or corporation to whom such receipt shall have been issued shall by the acceptance of said receipt, agree to permit said Street Superintendent to deduct such cost from the sum so with him deposited and covered by such receipt, and which said sum shall be applied to the payment by said Street Superintendent of such cost and expense of refilling such excavation, and if the cost of refilling such excavation and restoring said street, road, alley or other place shall exceed the amount of said deposit, no new or other permit shall be granted to such person, firm or corporation, directly or indirectly, for the making of any other excavation in any street, road, alley or other public place within said City of Lodi until the unpaid portion of such cost shall have been fully paid, liquidated and satisfied by such person, firm or corporation, and in addition thereto an action may be instituted in a court of competent jurisdiction to recover from such person, firm or corporation such excess or unpaid portion of such cost. The notice hereinabove referred to may be either written or printed and shall be served personally upon such person, firm or corporation to whom such receipt shall have been issued, or by leaving the same at the residence or place of business of such person, firm or corporation, or with the person having charge of the work of making or refilling such excavation, or if such person, firm or corporation cannot be found, or if such residence or place of business is unknown, or is outside of said City of Lodi, said notice may be

served by depositing the same in the United States postoffice at Lodi, California, addressed to the person, firm or corporation at such place of business or residence, if known, or if unknown, at the City of Lodi, and by posting a copy of such notice on or at such excavation.

Sec. 7-Any person, firm or corporation to whom any such permit shall have been issued and by whom such excavation in any public street, road, alley or other public place shall be made, shall be deemed and held to warrant the work of refilling and repair thereof for the period of one year after the refilling of such excavation against all defects in workmanship or materials and against any sinking or depressing in the surface of such street, road, alley or public place where such excavation shall have been made, and whenever within one year any ~~part~~<sup>or</sup> the surface of any public street, road, alley or other public place so warranted becomes in need of repairs by reason of any defect in workmanship or material done or used in said work of refilling or repair, or where any depression or sinking occurs at such excavation by reason of the making of such excavation, the Street Superintendent shall serve on the person, firm or corporation by whom such excavation was made, a written notice stating that repairs are necessary, and requiring such repairs to be made within five (5) days after the service of said notice. Said notice shall be served in the manner provided in Section Six(6) of this ordinance for the service of the notice therein referred to, and if said notice shall not be complied with within said period of five days, said Street Superintendent shall proceed at once to make such repairs at the proper cost, charge and expense of such person, firm or corporation, and shall deduct the same from any deposit then in his hands made by such person, firm or corporation, and if such sum shall be insufficient an action shall lie in a court of competent jurisdiction to recover the unpaid balance of such person, firm or corporation so making such excavation..

Sec. 8-The Street Superintendent shall deduct from the deposit made for an excavation, under the provisions of this ordinance, a sum equal to two and one-half ( $2\frac{1}{2}$ ) cents per square foot of surface of the excavation in public streets, roads, alleys, or places

which are macadamized or surfaced with asphalt, and one-fifth of one cent for each square foot of surface of the excavation in public streets, roads, alleys, or other places which are not macadamized or surfaced with asphalt; and he shall also deduct the cost of any work done, or repairs made by him, under the provisions of Sec. 6 or Sec. Seven (7) of this ordinance, from any and all deposits in his hands, or that thereafter may come into his hands, belonging to the person, firm or corporation required by this ordinance to do such work or make such repairs. Immediately upon the completion of the work of refilling and surfacing the excavation or excavations for which a deposit has been made, as aforesaid, the Street Superintendent shall return and refund to the person, firm or corporation making such special deposit as in Section One (1) hereof provided, the balance of such deposit, after making all the deductions herein authorized.

The decision of the Street Superintendent as to the cost of any work done or repairs made by him under the provisions of Section Six (6) or Section Seven (7) hereof, shall be final and conclusive as to such cost.

Said Street Superintendent shall pay to the City Treasurer all sums deducted by him from all deposits and said City Treasurer shall deposit all said sums to the credit of the general fund.

Section 9- All excavations, refilling of excavations and repairing of pavements under the provisions of this ordinance shall be made under the supervision and direction of the Street Superintendent. Said Street Superintendent may, when he deems the same necessary, employ an inspector, whose duty it shall be to see that the provisions of this ordinance are complied with, and he shall from time to time receive such compensation as may be fixed by the Board of Trustees of said City.

Sec 10- It shall be unlawful for any person, firm or corporation to lay any gas or water service pipe or main pipe, or any private sewer or other conduit in any street, road, alley or other public place in the City of Lodi at a distance of less than two feet below the established grade of such street, road or alley, or less than two feet below the surface of such other public place.

Sec.11- Any person,firm or corporation engaged in making or refilling any excavation in any public street,road,alley or place,must at all times while such work is in progress,keep at the place where such excavation is being made the original receipt issued by the Street Superintendent,or a copy thereof,and must on demand,exhibit the same to the Street Superintendent or to any member of the Board of Trustees of said city,or said inspector hereinabove referred to,or to the City Marshal or any police officer of said city.

Sec.12- Whenever in making an excavation any water pipe, gas pipe,sewer pipe,or other pipe or conduit is encountered,care shall be taken by the person,firm or corporation making such excavation not to break,tear up,destroy,or interrupt such pipe or conduit, or the contents thereof,and any such person,firm or corporation so making such excavation who shall injure any such pipe or conduit, shall immediately cause the same to be repaired,at his or its own proper cost and expense,to as good condition as the same was in at the time same was broken.

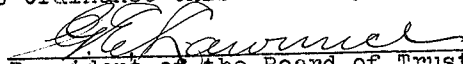
Section 13-Any person,firm or corporation who shall violate any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and shall upon conviction thereof,be punishable by a fine of not more than three hundred dollars (\$300.00) or by imprisonment in the City Jail for a period not to exceed ninety (90) days,or by both such fine and imprisonment,and each day upon which such violation shall take place shall be deemed a separate offense.

Sec.14- That all ordinances and parts of ordinances in conflict herewith be,and are,hereby repealed.

Sec.15-The City Clerk shall certify to the adoption of this ordinance and cause the same to be printed and posted in at least three conspicuous places in the City of Lodi.

Sec.16.- This ordinance shall take effect thirty days after its passage,approval and publication.

I hereby sign and approve this ordinance this 16th.day of September,1912.

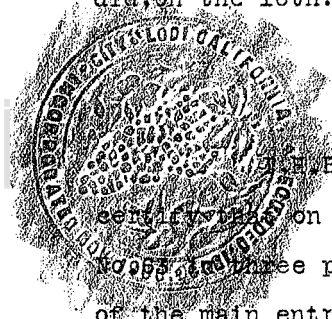
  
President of the Board of Trustees  
of the City of Lodi,California.

I, J.M. McMahon, City Clerk of the City of Lodi, do hereby certify that the foregoing Ordinance No. 63 was read and introduced at an adjourned regular meeting of the Board of Trustees of the City of Lodi, on the 10th. day of September, 1912, and was, thereafter, at a regular meeting of said Board, on the 16th. day of September, 1912, duly passed by the following vote:

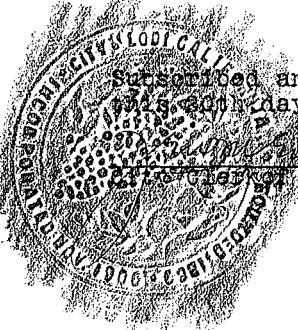
Ayes: Trustees Black, Blodgett, Hale, Lawrence and Rich.

Noes: None. Absent: None.

And I further certify that the President of said Board did, on the 16th. day of September, 1912, sign and approve said ordinance.

  
J. M. McMahon  
City Clerk of the City of Lodi,  
California.

E. B. Coleman, City Marshal of the City of Lodi, do hereby certify that on the 20th. day of September, 1912, I did post Ordinance No. 63, in three public places in the City of Lodi, to-wit: on the door of the main entrance of the Municipal Building; at the Post Office on Sacramento Street; and on the flag-pole at the intersection of Pine and Sacramento Streets.

  
E. B. Coleman  
City Marshal of the City of Lodi.

Subscribed and sworn to before me  
this 20th day of September, 1912.

J. M. McMahon  
City Clerk of the City of Lodi.